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Competition and Consumer Policy  
Building Resources and Markets  
Ministry of Business, Innovation and Employment  
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**Canterbury Mayoral Forum submission on the Ministry of Business, Innovation and Employment's Discussion paper: Economic regulation and consumer protection for three waters services in New Zealand**

1. The Canterbury Mayoral Forum (CMF) thanks the Ministry for the opportunity to make a submission on its economic regulation and consumer protection for three waters services in New Zealand discussion paper.

## **Background and context**

2. The CMF comprises the Mayors of the ten territorial local authorities in Canterbury and the Chair of the Canterbury Regional Council (Environment Canterbury), supported by our Chief Executives. The purpose of the Forum is to promote collaboration across the region and increase the effectiveness of local government in meeting the needs of Canterbury's communities.
3. All Canterbury councils actively participate in the Forum: Kaikōura, Hurunui, Waimakariri, Selwyn, Ashburton, Timaru, Mackenzie, Waimate and Waitaki District Councils, Christchurch City Council and Canterbury Regional Council (Environment Canterbury).
4. We note that the Christchurch City Council, Timaru, Mackenzie, Hurunui and Waimakariri District Councils, are also making individual submissions. We support careful consideration of these submissions.

### ***Mayors standing together for Canterbury.***

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## Mayoral Forum's *Plan for Canterbury*

5. The CMF published the *Mayoral Forum's Plan for Canterbury* in September 2020, which sets out the CMF's five key priorities in this local government term.
6. One of the key objectives of the Plan is:
  - *sustainable delivery of Three Waters services in Canterbury.*
7. Advocating for a Three Waters regulatory system that utilises risk-and evidence- based interventions to ensure the safe and efficient delivery of water services is a key action for the CMF.
8. We welcome this opportunity to provide Canterbury's view on the matters in the discussion paper.

## Initial comments

9. The Mayoral Forum agrees that there is a case for regulatory oversight of three waters. However, we strongly consider that it does not need to be established all at once. It is important to consider what is essential at the outset (possibly simply information collection) then move to further controls as required. The Mayoral Forum is of the view that creating a full solution at the outset will very likely result in a system that is over engineered and subject to continual amendments as more information comes to hand.
10. The question of which institution is charged with regulatory responsibilities will also be influenced by how far it is intended to go at the outset. If information disclosure is the main initial tool, then Taumata Arowai is the logical option. Price control however is a more specialised task that would more logically sit with the Commerce Commission.

## General comments

11. Following the review of the discussion paper on *Economic Regulation and Consumer Protection for Three Waters Services in New Zealand* we have followed the template to provide answers and comments to the questions asked.

<b>1</b>	<b><i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i></b>
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**Response:**

The CMF considers the establishment of an economic regulator essential, especially under the proposed four water services entities model (WSEs). Given the significance of the entities, being by far the largest organisations in New Zealand, and being geographic monopolies, there needs to be economic regulation and associated enforcement.

Economic regulation is critical to protect communities, assets, and to force accountability, but also to assist the entities in managing three waters responsibly on behalf of communities as they establish and set new processes. In the initial period, this should focus on information disclosure, and after several years could then transition to regulating price and quality decisions.

**Other comments:**

Given the purpose of Taumata Arowai and the proposed economic regulator, the greatest area where environmental outcomes and costs will need to be traded-off will be stormwater networks. This needs to be balanced between Taumata Arowai and the economic regulator to ensure both aspects are considered rather than weighting one more significantly. The discussion paper does not seem to recognise the importance of this.

When read in detail it appears that the discussion paper has been developed in isolation of a full understanding of the three waters reform and how each component will work with each other to achieve alignment.

Section 44 states that one of the starting points is: *Where stormwater network specific assets are attached to assets owned by another party (e.g. treatment devices attached to roading assets), these assets will be economically regulated.*

This is an unexpected and concerning approach and implies that the three waters economic regulation will reach quite far into other council services such as rural land drainage, roading, recreation and reserves, and buildings and property. A clear delineation is required as we consider this well beyond the scope of the Government's three waters reform programme.

Section 45 states *"These kinds of arrangements may be the subject of some form of service level agreement between the water services entity and relevant roading control authority or other land/asset owners."*

This is a significant understatement and demonstrates a lack of understanding of stormwater in the discussion paper. The interrelationship between stormwater and other council services to the community are very complex and intertwined.

Section 47 states *"Including stormwater in the economic regulation regime also avoids the complexity and compliance costs that arise from having regulated and unregulated services operated by the same supplier. In particular, it avoids the cost allocation issues that can arise from needing to allocate common costs between the regulated and unregulated business operations."*

We consider this a weak argument but accept it is relevant. In keeping with this position, the relationship between urban stormwater, rural drainage and roading has been underestimated through the reform process. Based on the line of reasoning in the discussion paper it would lead to the conclusion that stormwater should not be included in the four large WSEs and therefore should be left with councils. Urban stormwater has far more interconnection with and relationship to other council three waters services, and the proposed model will be very complex and have significant cost allocation challenges.

Section 48 states; *"Our preliminary view is that stormwater networks should be economically regulated, but recognise that the benefits and costs of doing so are likely to be more finely balanced than they are for drinking water and wastewater networks."*

The benefit is a trade-off between environmental outcomes and cost. Reference to a collaborative approach between Taumata Arowai, the economic regulator and regional, district and city councils should be included.

**2 What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?**

**Response:**

Yes, we consider that stormwater networks should be economically regulated for the same reasons as outlined in our response to question 1. Fundamentally the stormwater system is a natural monopoly which has the risk of underperformance and overpricing. If stormwater is taken over by the WSEs it should be regulated in the same way as water and wastewater to achieve consistency, accountability, efficiency and transparency as well as community outcomes.

**Other comments:**

p. 24, Section 55 states that *“The Government’s three water reforms have been designed to result in new Water Services Entities that have sufficient scale to be able to affordably address the infrastructure deficit, and generally deliver better outcomes for consumers. Each of the four Water Services Entities will serve populations of between 800,000 to 1,700,000 consumers and maintain the strong natural monopoly characteristics that are present in the current service delivery arrangements.”*

We note that the large WSEs will have stronger monopoly characteristics than councils currently do due to:

- size
- disconnect from communities
- lack of ability for communities to ‘vote out’.

The four WSEs proposal will amplify monopoly characteristics. This could have lasting adverse economic and social effects on communities.

The structure of the WSEs will also impact flood response management. The need for flood response is becoming more regular because of climate change as we continue to experience more severe weather events. It is not approached in a ‘one size fits all’ way but is instead managed in a very localised manner by councils with teams who are familiar with the area and its assets deployed to inspect infrastructure and direct any emergency works required to protect life and property.

Responding to flood events is reactive and requires staff to be willing and motivated to work in adverse conditions, often during the night. Across local government staff are keen to use their expertise in these events to assist the communities they serve and with which they have an existing relationship. A key concern raised prior to the Government’s mandating of the reform process was how flood management response would work, given WSEs are proposed to cover vast areas in some parts of the country, and current localised arrangements already work successfully.

Further, with increasing environmental regulation and enhanced treatment of stormwater discharges being required, it is likely that the cost of managing urban stormwater networks will increase significantly in the future.

p. 25, Section 56 states; *“The Government has established governance arrangements to reduce the risks of entities becoming less responsive to community needs. The proposed governance arrangements for the Water Services Entities are set out in Figure 6 below, and obligations on each of the Water Services Entities to:*

- *establish consumer fora to act as a key vehicle for consumer views to be heard on issues such as price-quality trade-offs*

- *engage with the wider community in the development of key strategic documents such as the Statement of Intent, Asset Management Plan, and Funding and Pricing Plan.*

We strongly consider the second bullet point should say “*engage with wider community*” **and councils**.

There is a clear lack of acknowledgment of local councils through the entire discussion paper. This is an example where there is an important and obvious role for councils, not only as the owner of the three waters assets, but also as a representative of the community.

In terms of Figure 6, why not include councils as part of the consultation and engagement?

p. 25, Section 57 states; “*While the governance arrangements and consumer engagement requirements will ensure that consumer voices are heard by the entities, the scale of the entities and the absence of competition means there are still significant risks that the entities do not act in the long-term interests of consumers.*”

We agree with the point made and add there are very significant risks that the entities do not act in the long-term interest of their collective customers and communities. Economic regulation will help to avoid this.

### **3 What are your views on whether the four statutory Water Services Entities should be economically regulated?**

#### **Response:**

Refer to our response to question 1.

We believe that the WSEs should be economically regulated to avoid issues such as under-investment, low valuations and other concerns raised by the Government (when justifying the Three Waters Reform case for change) from occurring in the future. The entities should be subject to economic regulation to avoid these issues arising given they have been identified as pitfalls of council processes.

Although economic regulation could successfully tie into the current system administered by councils, if the four-entity model goes ahead, we do not consider it worthwhile economically regulating councils before the handover in 2024. This is due to the resource required to set up such a process, which won't be long term, at a time when staff will be required to resource the transition on top of business as usual. Regardless of whether three waters services remain with councils or go to larger entities, economic regulation should start to come into force in mid-2024.

The four entities need to be regulated in such a way that is transparent to their local communities. This regulation needs to clearly identify efficiency gains, provide accountability to communities, deliver a high level of transparency particularly around asset management and lead infrastructure for growth. This all needs to occur for an affordable cost.

The entities will be new and will require shaping which can be done to some extent by Taumata Arowai, but establishment of an economic regulator would help ensure that all aspects of the entities are managed appropriately to provide the best outcome for communities.

4 **What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.**

**Response:**

Domestic self-supplies where one domestic dwelling has its own supply, as defined in the Act, is excluded from the Water Services Act and therefore shouldn't be subject to economic regulation. We note this is because the costs would likely outweigh the benefits and these schemes are of a scale where users can have a direct line of sight to owners.

Because the entity won't manage self-supplies such as private wells, the economic regulator shouldn't be involved. This is a water supply that the private landowner(s) is responsible for managing and maintaining to appropriate standards, like a Right of Way. We also note that smaller collectively owned supplies will have far more direct line of sight to the owners of the scheme and therefore an ability to directly engage and influence the trade-off between cost and level of service.

The CMF's main concern is the scale and revenue requirements of the four proposed entities. It makes sense to initially focus on them; and other entities can be subject to regulation later. On balance, the cost of compliance with economic regulation for small community owned supplies is likely to be prohibitive.

5 **What are your views on whether the Water Services Entities should be subject to information disclosure regulation?**

**Response:**

Because the WSEs will be monopolies with a risk of developing a lack of incentive to charge efficiently delivering services to appropriate standards, they should be subject to information disclosure regulation. This should be publicly available and subject to LGOIMA requirements to promote transparency and trust within communities. Entity document systems could be designed to enable ease of information disclosure. Reporting should be to a high level but without making the process unproductive in terms of cost/benefit.

**Other comments:**

p. 29, Section 72 states ***“The lack of profit motive for councils does not appear to have been sufficient to ensure New Zealanders receive high-quality, affordable water services, or that water infrastructure is managed efficiently. Overseas experience regulating water services, as well as domestic experience regulating other utilities, suggest that price-quality regulation is a highly effective tool in attaining the sorts of outcomes the Three Waters Reform aims to achieve, i.e. incentivising suppliers to provide affordable, high-quality water services. In particular, price-quality regulation often plays a crucial role in driving economic efficiency within regulated suppliers to ensure that water services are as affordable as possible for consumers.”***

We do not agree with this broad-brush statement and contend that councils do manage the current three waters services efficiently given the legislative constraints that they operate under. A counter argument could be put that the motive of requiring a profit helps drive efficiencies. It's not the risk of profiteering (over-charging) alone that is the problem; it is the fact that as “natural” monopolies the WSEs have little incentive to charge for their services efficiently or to supply water to appropriate quality standards. Our view is that there are benefits of price quality regulation regardless of whether there is a profit motive or not.

**6 What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?**

**Response:**

The WSEs should be subject to price-quality regulation in the long term, but this should have a phasing in period. Levels of service and standards set out by Taumata Arowai should be contained in a framework that informs price-quality regulation to steer WSE improvements. To provide for community wellbeing long term, the price quality regime needs to be multi-dimensional ensuring sustainable, environmental and intergenerational outcomes for all.

To avoid full establishment from day one, a staged approach could be considered with stage one to include information disclosure requirements while the WSEs establish their capital investment requirements. Although a timeline for review and commencement of stage two for price quality regulation should be planned from day one, it is likely that this will be driven by if/when evidence of overcharging or quality issues arise. Hopefully by this stage investment and revenue requirements for the four entities will be clearer.

Levels of service provided by the entities may vary based on geographical location or community preference. For example, if a chlorination exemption is in place when WSEs take over, in 2024 the life of the exemption will be given effect to and then it is proposed that the community affected will be consulted on the application of further exemptions. This situation would affect price-quality and proves that not all areas will be subject to the same quality. Administering water, wastewater and stormwater cannot be approached in a one size fits all manner.

**Other comments:**

p. 30, Section 76 states *“Combining the strong objectives that the government has around service quality and affordability, and the reformed three waters sector comprising four large Water Services Entities, our view is that individual price-quality regulation is the most appropriate form of price-quality regulation.”*

We agree with this statement, due to the monopoly that the four entities will have and the absence of electoral accountability that will exist. This lack of accountability combined with a lack of profit drive could result in inefficiencies, price quality objectives would help reduce the risk of this scenario and provide better service to communities.

**7 What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?**

**Response:**

We consider this necessary, based on our response to question six. The entities will be different sizes with individual features, including different capital investment programmes and associated revenue requirements. As the diagram at paragraph 22 makes clear, investment plans have a critical influence on the proposed “building blocks” regulatory model. It should be noted also that standards are intended to increase when the WSEs are established, therefore standards today should be a baseline that is not reduced.

Regional, city and district councils should have a voice in establishing the regulations based on their local knowledge, and capability to advocate for their communities.

- 8 **A) Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?**
- B) If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?**

**Response:**

- A. Yes, this should be transitional to avoid rapid change for ratepayers and to ensure standards are specific to the community concerned.

The draft timetable at paragraph 82 suggests an advance commitment to implementing price/quality regulation. The issue here isn't simply whether economic regulation should be implemented gradually, which we support. As we all learn more about the scale and nature of the challenges facing the WSEs, their regulation would sensibly start with information disclosure and move to price/quality regulation as/if needed.

- B. A transitional price-quality path should be developed by the economic regulator in conjunction with Taumata Arowai as well as regional, city and district councils. As mentioned in our response to question 7, input from local government would not only provide local knowledge but also provide opportunity to advocate for communities.

It is important to note that the model for calculating regulated maximum allowable revenue as described in section 22 on page 16 is a completely different model to the way councils fund the lifecycle of their assets. Under the proposed model for the four new entities they will effectively not fund depreciation. The entities will deplete the asset value over time without building any financial reserves for future renewals.

In addition to the above but still related to part B, we consider there to be significant risk in using the Government Policy Statement mechanism. We therefore do not support the use of such a mechanism. A regulatory process should be clear and unable to be influenced politically or otherwise. We consider implementation by an independent economic regulator to be more appropriate and result in much lower risk of politicising the regulatory process.

- 9 **A) What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?**
- B) What factors do you consider the economic regulator should include in their advice to the Minister?**

**Response:**

- A. Yes, we consider that the regulation should be monitored, but the Minister should rely on advice from regional, city and district councils as well as the economic regulator. In addition, alteration to the scope of the regulations is essential, but should only be allowed by Order in Council, not by an individual Minister. This will preserve the opportunity for review by Parliament's Regulations Review Committee.

- B. We consider that there should be consideration of community wellbeing and economic impact on communities, including employment.

The CMF also agrees with the factors listed in Section 90, as follows:

- *“whether a supplier has the ability and incentive to exercise substantial market power in, taking into account the effectiveness of existing regulation and governance arrangements (including ownership arrangements and consumer voice arrangements)*
- *whether the benefits of extending or reducing economic regulation materially exceed the costs, and the form(s) of economic regulation that should be extended or reduced*
- *any material long-term efficiency and distributional considerations associated with recommendations to extend or reduce the application of economic regulation.”*

- 10 **A) What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?**
- B) What are your views on whether the sub-purpose of limiting suppliers’ ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?**
- C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?**
- D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?**

**Response:**

This should be replaced with something that is relevant to three waters.

The perspective from which this document is written replicates the telecommunications and electricity sector, however these services are very different to supplying water, wastewater and administering stormwater networks and associated discharges.

Electricity and telecommunications have fewer variables as they are supplied in the same form across the country, so nationally applied standards are more easily met.

In keeping with a theme that appears throughout the discussion paper, it is considered that the repeated reference to consumer is a reflection of this industry administering a transactional relationship with its customer, as opposed to working with communities.

Another significant complexity that further widens the gap between supplying electricity and three waters services is that it is challenging to supply water services to individual customers when they have different quality characteristics to their neighbours or carry out urban stormwater initiatives that impact on service levels to whole neighbourhoods and communities.

This is not the case for electricity supply where electricity consumers can have different interruptability conditions. For this reason we consider it will be more meaningful and effective to engage with whole communities rather than individual customers. We consider that that electricity, commerce and telecommunications regulation has served small communities poorly to date, and these examples should not be followed for three waters.

It is not anticipated that the WSEs operate in isolation from councils and communities solely for the purpose of providing services for a charge. Communities value the ability to input and have a strong sense of ownership over their three waters assets.

**Other comments:**

p. 35, Section 92 has a very narrow focus outlined in sub-sections a) to d).

p. 36, Section 96 states *“One modification that may be desirable is to amend or remove limb (d) of the above example because the Water Services Entities that will most likely be the focus of the economic regulation regime will be publically owned statutory entities that will not have a profit motive, access to equity capital, or the ability to pay dividends. However, this modification could potentially limit the regime’s ability to regulate private, community or other hybrid schemes in the future if they were to reach a scale that would make economic regulation desirable.”*

However, limb (d) may need replacing with something like, justify cross subsidies, or justify efficiencies, as opposed to “extract excess profits”.

**11 What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?**

**Response:**

We consider that a sector specific regulation regime would be appropriate, taking into account the different financial circumstances (including starting positions and investment needs) of the four WSEs and their communities. As described throughout the document, regulation needs to reflect that delivering three waters services is complex and can vary based on multiple factors. Three waters, in particular stormwater, are very different community services from electricity and telecommunications.

Again, as we note above, we consider that regulation of electricity, commerce and telecommunications has served small communities poorly to date.

**12 What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?**

**Response:**

We have no strong view either way. However, there may be a case for a shorter initial regulatory period if information disclosure is introduced ahead of price/quality controls.

**Other comments:**

We agree that it will be important for entities to establish with some idea of what the rules of the game will be, as this will influence how they set themselves up. As mentioned previously, we consider it to be appropriate to adopt a staged approach with information disclosure obligations occurring before quality and/or price regulation (as needs become apparent).

On p. 40, Section 113 on the third line, we are unclear on what is meant by *“altering depreciation”*. This is deeply concerning. Depreciation cannot be altered; this would not be transparent. Funding of depreciation should be handled in a transparent manner, potentially this could include being transparent about altering any time period over which depreciation was allowed or required.

We support the approach of changes to costs to ratepayers/customers being phased in, while allowing for funding of necessary three waters infrastructure. The mechanism for managing this transition needs to be fully open and transparent. It is also an important point to note that the Government is burdening the new entities with non-three waters debt on day one. This is not

aligned with the practice that councils adhere to in terms of ring-fencing projects and ensuring that rates collected for a specific purpose are spent on that type of asset (e.g. water must be spent on water projects).

p. 40, Section 116 states *"Active approaches that set out robust efficiency challenges or targets that are accompanied by rewards (e.g. fast track investment approvals) if they are achieved, or penalties (e.g. consumer rebates or compensation) if they are not achieved."*

We need to be careful not to drive unforeseen outcomes that may not be in the best overall interests of the community. Potentially, there could be an initial passive phase over 3-5 years before carefully considering a more active phase beyond this point.

p. 41, Section 117 states; *"Economic regulation regimes in New Zealand have tended to take a passive approach to the achievement of efficiency gains. However, the Government's strong focus on affordability and the potential for significant amounts of free cash-flow to be available - because of the absence of active owners demanding a return on equity though dividend payments - suggests that a more active approach to efficiency is highly desirable. This focus on cash efficiency is likely to require some modifications to the 'building blocks' approach outlined in Chapter 2, potentially to provide a stronger focus on ensuring that Water Services Entities having the minimum efficient level of cash required to finance their operations."*

It is important to note the significant amounts of free cash-flow are such because the entities are not going to fund depreciation as councils do. This is a significant departure from current practice.

- 13 **A) What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?**
- B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?**
- C) What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?**

**Response:**

- A. Yes, the regulator should be required to do this.
- B. Yes, the regulator should be able to minimise price shocks.
- C. Passive 3-5 years, then review.

**Other comments:**

p. 39, Section 108, third bullet point states *"Input methodologies typically cover issues such as the: allocation of common costs where a regulated supplier undertakes activities that are economically regulated alongside those that are not (e.g. if a supplier undertakes commercial activities in a market where there is workable competition)"*.

We agree with the above, with the addition of the following aspects:

- operations
- capital
- level of service
- growth

- renewals.

p. 39, Section 111 states; *“Our preliminary position is that the economic regulator should be obligated to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement the economic regulation regime. However, this is a ‘on balance’ judgement.”*

- 14 A) **What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?**
- B) **Who do you consider should have primary responsibility for determining the structure of three waters prices:**
- The Water Services Entity, following engagement with their governance group, communities, and consumers?*
  - The economic regulator?*
  - The Government or Ministers?*
- C) **If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?**

**Response:**

- A. This is a very important question. Importantly it relates to the “structure” of three waters prices, rather than to the absolute level of such charges. But even so, it envisages the politicisation of water pricing.

It is essential that any policy objectives, including the structure of the three waters prices, are established in a transparent manner in full consultation with communities, iwi and councils.

The present system, given that council asset owners are elected bodies, allows for local decision-making subject a democratic process at a community level. But under the large entity model the proposal is to introduce scale efficiencies in the provision (including the financing) of water services. This key objective of the reform will not be achieved if Parliament decides the structure of water service charges. Inevitably this is likely to affect the total level of these charges. Parliament should be kept right out of such matters – or the delivery of water services should be left, as now, to locally accountable elected bodies.

- B. a) This should include councils as owners and community representatives, and not just Government or Ministers. If reform is to proceed then the logic of treating water services as quasi-commercial needs to be followed through. Therefore the WSEs should be responsible for determining the structure of their prices/charges. The role of the regulator is simply to manage a process to review and approve this.

The Government and Ministers should be kept right away from such matters or the whole purpose of independent regulation will be undermined. If there is to be any political oversight of the pricing this should be through councils as the asset owners and elected community representatives.

**Other comments:**

In relation to p.41, Section 120; what about sustainability, resilience, well-beings, economy, employment, cost to service, deprivation, lifestyle choice, level of service? These appear to have been missed but are all significant to the conversation.

In relation to p.42, Section 121; is inter-entity cross subsidisation a consideration? We understood that a significant driver for reform was to have equity across the country. However, this is not achieved in the current proposed four entity model unless the Government is considering cross-subsidisation between entities.

**15 *What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?***

**Response:**

Broadly we agree with this, as per the preliminary view outlined in Section 135: “*Our preliminary view is therefore that merits review should be available on the input methodologies developed by the economic regulator, and determinations that implement individual price-quality regulation. However, we do not consider merits reviews should be available on the regulator’s determinations that implement procedural processes, such as information disclosure regulation.*” Above all, the right to judicial review must not be excluded.

Given the sums of money likely to be at stake the opportunity for any merit appeals is bound to be utilised. Therefore it should be limited, or the whole process will consume even more time and resource.

**Other comments:**

The economic regulator and WSEs need to have a relationship agreement given that there are no alternative competitors. Both parties will be established long term and should be working for the best overall outcome for the community.

**16 *Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?***

**Response:**

We broadly agree that compliance and enforcement by the regulator will be critical. Collaboration between Taumata Arowai and the economic regulator’s compliance teams is vital to ensure the approach isn’t disjointed, and to ensure that the best outcomes are achieved. This relationship will require information-sharing across organisations which will require coordination in terms of information disclosure.

The regulation should:

- encourage open disclosure, transparency and learning
- be proactive and two way
- be more focused on proactive education, and enabling a solid and collaborative relationship between the regulator and supplier
- phase in over time to allow establishment
- ratchet up provisions when deliberative lack of action (warning systems).

Compliance teams should be established to administer a collaborative approach that supports entities to become compliant with provisions increasing over time.

It is important to recognise that the tone of the relationship will be set by the regulator and not the WSEs. This is another argument for using the Commerce Commission if price/quality regulation is envisaged. We recognise the Commission has experience in managing these kinds of relationships, however, are concerned that it does not have experience and understanding in three waters. A phasing in process and collaborative approach will allow time for the WSEs and the regulator to gain the necessary knowledge and experience.

**Other comments:**

We agree with the following in relation to all policy direction (well-beings), p. 49, Section 141, first bullet point which states *“For these reasons, international experience and experience from other sectors in New Zealand suggests that high performing economic regulators: are independent and operate at arms-length from Government and regulated suppliers in achieving their statutory objectives.”*

Having the economic and quality regulator as one entity does have some merit. This would allow the most for costs/quality trade-off with one regulator in relation to p. 50, Section 145, Taumata Arowai bullet point, as follows; *“In our view, the assessment criteria above suggest there are three potential options for the economic regulator:*

- *Taumata Arowai – Taumata Arowai is a new ‘the new’ (there is a typo in the discussion document here) drinking water regulator that will also have functions regulating the environmental impacts of wastewater and stormwater networks. The entity is currently in establishment phase and is expected to commence its regulatory functions in the second half of 2021 when the Water Services Bill becomes law. As a Crown Agent under the Crown Entities Act 2004, Taumata Arowai is required to give effect to Government policy.”*

**17 Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.**

**Response:**

On balance, we consider the Commerce Commission to be the most appropriate economic regulator should price controls be a focus. If regulation was to only include information disclosure, Taumata Arowai may be suitable to administer this.

Nevertheless, we make these comments with significant reservation.

If the Commerce Commission is responsible, they must work closely with Taumata Arowai and local government to achieve trade-offs. In the future, a water commissioner could be established to achieve these objectives.

We consider that neither the Department of Internal Affairs, nor the Commerce Commission have a good understanding or handle on three water services, particularly in the challenging areas associated with stormwater. However, given the Commerce Commission’s expertise in price, quality and scrutinising capital investment programmes of monopoly utility companies, we believe the Commission could acquire the necessary water expertise over time. The Commerce Commission has by definition a very narrow focus and mandate that would not necessarily fit well with three waters services, and we expect there would need to be some allowance for transition from the current model to the new regime.

It will be important that the economic regulator treats all WSEs consistently to ensure a dependable relationship and associated processes are established with Taumata Arowai as well as upholding Te Mana o te Wai. A consistent approach will also ease comparison across the WSEs, allowing differences to be reconciled.

18 **What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?**

**Response:**

Yes, we agree that these costs should be funded via levies on regulated suppliers, acknowledging that this is ultimately paid for by the communities served by the suppliers.

This should be very transparent and available for public scrutiny with an expectation that the bill received by members of the community will include a breakdown showing costs and charges.

19 **Do you think that the levy regime should:**

**A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister?**

**OR**

**B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?**

**Response:**

We do note once again that councils, as the asset owners and community representatives, have not been considered in this assessment.

We consider that Ministerial involvement would politicise the process of setting levies which could have adverse effects on the process.

20 **Are there any other levy design features that should be considered?**

**Response:**

There should be consideration as to whether cross subsidies between entities, in relation to levies, could be used to achieve best national outcomes (e.g. support tourism, national health and economic benefit, national resilience).

**Other comments:**

p. 60, Section 166 states; *“As with the economic regulation regime, a clear legislative statement of the objectives of a consumer protection regime can help to guide the interpretation and implementation of that legislation. The paramount objective of the consumer protection regime will be improving service quality to reflect the demands of water consumers, including through:*

- *enhancing the quality of water services over time (focussing on aspects of quality not regulated by public health, environmental or economic regulators)*
- *providing consumers with a strong voice in how water services are delivered*
- *providing consumers with effective redress where the quality of service does not meet appropriate standards*
- *providing consumers with transparency regarding water charges.”*

We agree; but if councils had more direct control this would help. Again there should be reference to and consideration of communities, both present and future, rather than just consumers.

- 21 A) ***What are your views on whether additional consumer protections are warranted for the three waters sector?***
- B) ***What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?***

**Response:**

- A. We agree that additional consumer protections are warranted given the health implications relevant to the sector when delivering services to communities. We see real value in a mandatory consumer complaints resolution scheme. If nothing else, it can be a useful safety valve on many individual customer issues.
- B. We consider individuals and communities will need help and empowerment to deal with massive monopoly entities.

- 22 ***What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?***

**Response:**

Yes, we agree that the consumer protection regulator should be able to issue minimum service level requirements via a mandated code. We agree that it is critical that the local community has a voice in this process, as water quality needs to be driven by local considerations. Discussions about levels of service should be had at a community level given that a higher level of service costs more (generally), but minimum standards may not lead to optimal outcomes.

Also, as noted throughout our submission, since consumers of water services can't switch suppliers and the services consumers receive often can't be individualised, it makes sense to recognise the role of communities acting on behalf of their individual members.

**Other comments:**

In reference to p. 61, Section 168, bullet point 7, requirement should include engaging with communities, not just consumers and engaging with councils. This is consistent with other feedback we have provided. This document lacks connectivity between communities, the regulator and councils.

p. 62, Section 171 states "*Mandatory codes involve the regulator setting minimum service quality requirements that apply to some, or all, regulated water service providers. The main benefit is that the regulator is able to directly control the requisite quality service levels.*

- *However, mandatory codes can be costly to develop, monitor and enforce, and may also impose significant compliance burdens on industry. Some of these costs may be able to be mitigated by allowing or requiring the code to be periodically reviewed, so that it focusses on areas of service quality that have the biggest net impacts on consumer welfare."*

We question the need to start with mandatory codes. We agree that minimum service levels are likely to be desirable, especially in response to large monopolies. But they are likely to take time to develop. We see merit in allowing the need for them and their optimum content evolve. The whole regulatory system does not need to be in place on day one.

Further, we consider that one size fits all mandatory codes could lead to sub-optimal outcomes. Careful consideration needs to be given to achieve the best overall community outcomes rather than being driven purely by mandatory compliance

We also strongly believe that mana whenua should be involved in setting minimum service level requirements that affect water quality.

WSEs should work closely with communities to educate in terms of water demand management and efficiency, obligations under bylaws and to enhance water literacy in terms of level of service agreed to be delivered.

**23 What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?**

**Response:**

Yes, they should. Guidance is valuable but should be non-mandatory.

**24 What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?**

**Response:**

Our preference would be for a single piece of regulation to cover economic and consumer protection, but this will need careful consideration. Further, it isn't clear why quality alone couldn't be regulated by Taumata Arowai. It is only if we move to price controls that the Commerce Commission or a stand-alone water services regulator needs to determine quality levels, since they will be intrinsically related to the price limits.

If prices were controlled, but not quality, then monopolies would be incentivised to allow quality to deteriorate. Likewise, if quality alone was the driver, this may become unaffordable for communities without the oversight of economic regulation).

**Other comments:**

p. 65, Section 182 states; *"Vulnerability generally refers to the likelihood of a negative outcome or experience of harm, which is a product of the circumstances of a consumer that result in them experiencing barriers to participating in essential services. Vulnerability can be a transient, sporadic, or permanent state. Many water consumers experience vulnerability at some point in their lives, and there are many factors that can give rise to it:*

- *experiencing financial instability or low financial resilience (sudden, acute, or chronic) causing genuinely difficulty in paying their bills*
- *a risk of harm to health or wellbeing by reason of age, health, disability in the case of disconnection*
- *dependent on supply of a particular volume of water for critical medical treatment*
- *an inability to advocate for, or represent, their interests in interactions with water suppliers (including small businesses)*
- *difficulty in obtaining or assimilating information*
- *an inability to buy, choose, or access adequate water supply where this access to a reticulated network is not available."*

We are unclear what is meant by the last bullet point. Current unserved properties should not have an expectation that they will be given services as this may not be efficient, affordable or practical.

25 ***What are your views on whether minimum service level requirements should be able to vary across different types of consumers?***

**Response:**

Yes, we consider that they should be able to vary, but again this should not be focused just on consumers. A community lens is required here, and councils should play an important role in this area. This already exists, e.g. the difference between an on demand even supply and rural trickle feed service.

26 ***What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?***

**Response:**

We strongly agree. Given the size and monopoly characteristics of the entities, this will in fact be essential. It is particularly important as individuals and communities will no longer have the benefits of democracy they currently enjoy through councils delivering these services on their behalf.

27 ***What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?***

**Response:**

We support this but are unclear on how this may work.

- 28 A) ***Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?***
- B) ***Do you support any other options to manage the regulatory impost on community and private schemes?***

**Response:**

A) & B) Initially this should just apply to the four water services entities. However this should be reconsidered over time. The entire regulatory system design should not be developed at the outset when there are so many unknowns.

29 ***Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?***

**Response:**

We broadly agree. Initially this should proactively be based on educating, supporting and collaborating. This will require a good level of funding and resourcing. Over time it is expected that there would be a transition to using more of the reactive compliance tools, provided the proactive initiatives are also continued.

There should be mandatory reporting to councils to hold entities to account.

**Other comments:**

Should “*Economic Regulator*” read as ‘*Consumer Protection Regulator*’ within p. 73, Section 204 as follows; “*Pulling together the considerations in the previous two paragraphs, we suggest an appropriate assessment criteria for evaluating options for the economic regulator is:*” We are unsure what this means and consider it may simply be an error in the document.

**30 Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?**

**Response:**

We agree but with some serious reservations unless regulation was to commence with information disclosure alone (as previously discussed). There is an apparent benefit in being the same as the Economic Regulator. We do raise the following questions:

- what about ‘Community’?
- how can councils be advocates for broader interests for community?
- how can councils have teeth in this system?

if councils are owners, how can they assert their rights as owners?  
Again, there is a narrow focus on consumer not community.

We are also concerned that the Commerce Commission would have a lack of understanding of three waters.

It is important to recognise that identifying consumers in the three waters context is not necessarily straightforward. Examples include whether wastewater overflows may be experienced by a group of consumers, and stormwater networks often do not provide single consumers with a service. A stormwater event may flood a property, a subdivision, or a large part of the whole community. A drinking water contamination event may also have detrimental health effects on a wide portion of the community.

**Other comments:**

p. 76, Section 208 states “Recognising these barriers, the Government has agreed that mechanisms to give consumers and communities a voice should be incorporated throughout the design of the Water Services Entities and the broader system to ensure that the system is responsive and accountable to consumers and communities.”

It is good to finally see reference to ‘*communities*’. As we have previously commented, this is lacking throughout the document.

p. 76, Section 209 outlines the three obligations of the Water Services Entities to allow for consumer and community voice, which are representation on the Governor’s Representative Group, establishment of a consumer forum and engagement, and publishing and reporting requirements. There is no mention of engaging with councils as advocates and representatives for our communities. This is concerning and needs consideration.

p. 77, Section 210 - again this section needs to include reference to councils and their communities.

31 **What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?**

**Response:**

Yes, it should be an obligation to engage with councils. Again, this should be with communities not just the consumer. As discussed above consumers can be an individual or a group of the community.

32 **What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?**

Please refer to our response to question 33 below.

We consider that naturally councils should take up this role given they already represent the affected community and have existing historic and institutional knowledge in this area. The new system should not be complex, especially initially. However the entities should fund councils to take on this role as they will not be able to rate for it.

33 **What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?**

**Response 32 & 33:**

How can councils play a role on behalf of communities in this?

Our view is that the need for an expert advocacy body who can advocate technical issues on behalf of consumers is not necessary, because councils are already engaged with communities and in a position to perform this function. However there is concern among less resourced territorial authorities that they may not have capacity or capability to provide technical water advocacy services for their communities going forward.

**Other comments:**

p. 79, Section 216 states; *“At present, most water consumers in New Zealand have limited recourse to dispute resolution with water providers. This is because a majority of water consumers receive their three waters services on a statutory basis from local authorities, rather than on a contractual basis. While consumers have some ability to raise service provision concerns with democratically elected councillors, and also with the Ombudsman who is able to deal with complaints about local government agencies, both these options have a limited time/resource to deal with consumer complaints about the delivery water services.”*

We consider the ability for community members and communities to hold councils to account will be lost in the new entities. We also think the reference to ‘some’ ability to raise service provisions significantly understates the current situation. Councils are well connected and responsive to their communities.

p. 79, Section 217 states; *“The Water Services Bill creates a backstop consumer complaints framework designed to ensure that consumer concerns about drinking water are properly investigated by suppliers. Drinking water suppliers are obligated to establish and maintain a consumer complaints process, and report annually to Taumata Arowai on that process.”*

We agree this is necessary.

**34** *What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?*

**Response:**

We support this and consider it will be essential. It needs to be focused on being accessible to all community members and communities.

**35** *What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?*

**Response:**

We agree the kinds of disputes listed in point 228 should be included.

We do note however that the list is very narrow and should be expanded significantly to cover the types of issues that arise with all three water services. These would include levels of service such as resolution of drainage and flooding of issues. Nonetheless, we consider there is no need to limit the scope of disputes. The legislation/regulation should also define the scope of the consumer dispute resolution provider by reference to the parties rather than to the dispute subject matter.

There needs to be clear avenues for urban developers who would work with councils to resolve resource planning and water connection issues. This suggests that there will need to be a three-way contract between the private developer, the council and the entity. There needs to be mechanisms made available so that any deadlock can be resolved.

**36** *What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?*

**Response:**

We consider that a mandatory statutory consumer disputes resolution scheme should be established. All WSEs should be subject to this, and consumers should have free access to raise disputes. The service could be paid for by the entities in addition to having an in-house disputes/customer complaints team.

We do note that ultimately the community will bear the costs of the scheme. Any issues unable to be resolved by the entities could be referred within mandated timeframes/deadlines to avoid ongoing disputes. We also consider that councils should have the ability to influence resolution outcomes and to represent communities or individual community members in this process.

**37** *Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?*

**Response:**

We consider that councils should have an active role in this as both the asset owners and community representatives. A formal assessment of options and assessment of the capability of existing services is therefore required. It does not appear from reading this discussion paper that there is enough information to reach a conclusion on this.

We do acknowledge that a single point of contact is useful here. In other words, adding to the jurisdiction of existing dispute resolution services (DRS) would allow this new service to piggyback on their existing recognition. Existing DRS also have considerable expertise and experience in resolving consumer disputes. There may be value in taking advantage of that as the system gets established.

**38 Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?**

**Response:**

Initially we can see the benefits for the large entities only. Smaller schemes should have less need as they have a clearer line of sight and connection with the scheme they are served by. This could be reviewed in the future.

This should cover all three waters services, not just water suppliers.

**39 Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?**

**Response:**

We consider this to be appropriate. This should cover all three waters services, not just water suppliers.

**40 Do you consider that there should be special considerations for traditionally underserved or vulnerable communities? If so, how do you think these should be given effect?**

**Response:**

We support special considerations for vulnerable communities. Advocates should be available at the cost of the entity. The service should be run in a way that does not need experts representing the applicant. Councils could be involved in this and should have some authority in the process.

**41 What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?**

**Response:**

Yes. These costs should be transparent (for example, shown on three waters bill).

**42 Do you think that the levy regime should:**

**A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR**

**B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?**

**Response:**

As previously discussed, Ministers should not be involved in such matters. This is the role of the regulator.

**43 Are there any other levy design features that should be considered?**

**Response:**

Councils should have a say in how the levy regime is established and operated. Given we consider councils should be involved in this process, we also consider that the funding of council activities in this service should be provided to Councils.

**Other comments:**

p. 89, Section 253 includes Table 11. We have added the highlighted bullet points.

<b>AGENCIES WITH POLICY OR STEWARDSHIP RESPONSIBILITIES</b>	<b>AGENCIES WITH REGULATORY RESPONSIBILITIES</b>	<b>ENTITIES WITH IMPLEMENTATION OR SERVICE</b>
<ul style="list-style-type: none"><li>• Ministry of Health (public health regulation)</li><li>• Ministry for the Environment (environmental regulation)</li><li>• Ministry of Business, Innovation and Employment (economic and consumer protection regulation)</li><li>• Department of Internal Affairs (lead agency for Water Services Bill and Water Services Entities Bill)</li><li>• <b>Councils – Owner/Council representation</b></li></ul>	<ul style="list-style-type: none"><li>• Taumata Arowai</li><li>• Regional councils</li><li>• Economic regulator</li><li>• Consumer protection regulator</li><li>• Consumer dispute resolution schemes</li><li>• <b>City &amp; District Council</b><ul style="list-style-type: none"><li>• <b>Building Act</b></li><li>• <b>RMA, LGA</b></li><li>• <b>Drainage Act</b></li><li>• <b>District Plan</b></li></ul></li></ul>	<ul style="list-style-type: none"><li>• National Transition Unit</li><li>• Four Water Services Entities</li><li>• Community/private schemes</li><li>• Self-suppliers</li><li>• <b>City &amp; District Council</b><ul style="list-style-type: none"><li>• <b>Rural drainage</b></li><li>• <b>Roading</b></li><li>• <b>Growth &amp; development planning</b></li></ul></li><li>• <b>Regional Council</b><ul style="list-style-type: none"><li>• <b>Flood protection</b></li><li>• <b>Fresh water outcomes</b></li></ul></li></ul>

Again, local government is missing. What about councils as:

- owners of the assets
- community representatives
- significant drivers and governors of communities
- partners in servicing communities

It is important to have integrated functions, services and growth, which councils provide.

p. 90, Section 256 states; *“Coordination across drinking water, environmental, economic, and consumer protection regulation will be essential for the delivery of high-quality outcomes. For example, both Taumata Arowai, the economic regulator, and the consumer protection regulator will have responsibility for different aspects of the quality of water services received by consumers.”*

There should be reference to councils three waters services, integrated with other services a council provides including:

- rural drainage
- roading
- growth and development
- coordination of all of the above
- community form.

**44 *Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?***

**Response:**

No. We consider that the proposed model will not best serve communities. The system proposed will go some way to addressing the concerns of councils, but our key concern is that the entire reform has been mandated by Government despite much of the sector and many communities remaining opposed to it.

The council should be involved in terms of coordination on key strategic directions, access to services, growth, and so on.

Providing an opportunity to hear the local voice of communities will be essential, as well as recognition of the long-term thirty-year viewpoint. There needs to be strong connections between infrastructure planning and spatial planning at the regional and local level and this needs to be done in partnership with councils.

**45 *Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?***

**Response:**

No. The government's role is to get its requirements into legislation or regulation. It shouldn't add a further instrument in the form of a GPS. The disadvantage of a GPS is that it is inherently political. It directly involves the government in the regulatory process. That brings the possibility of further cost and delay, if not litigation.

However, we consider that councils must have this ability. Entities must work within the larger community visions so that there is no disconnect between the community and the services that are being provided as there currently with other utilities.

**46 *What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?***

**Response:**

We agree, but with serious reservations. Individual privacy should always be a significant consideration. It should be proactive and be cohesive and consider trade-offs, considering each other's functions. However the protection of individual and community rights should be well considered. There should be controls and safeguards to achieve this.

## Other comments

p.13, Section 13 states; *“Consumers should be paramount”*.

We seek clarification about which consumer this is referring to, the individual today or community of the future? We think there is a need for the discussion document to consider this and give a clear explanation of who the consumer is. Our view is that the term consumer is very narrow and does not reflect the communities serviced by three waters which cover the individual today right through to future generations and the whole community.

P. 18, Section 31 states *“Compliance costs incurred by regulated suppliers are more difficult to quantify as they tend to spread across suppliers’ cost bases as a general cost of delivering services to consumers. As such, it is likely that they are met by some combination of the supplier’s shareholders and consumers. The fact that consumers end up bearing a significant portion of the costs of any economic regulation regime means that care is required to ensure that any economic regulation regime is designed in a way that provides net benefits to consumers.”*

Compliance costs need to be a significant consideration. We consider that the economic regulator should be proactive in understanding the extent of costs and the trade-offs that will be required in achieving desired outcomes, prioritising and the costs involved. Council should be a central part of this assessment and trade off as they are asset owners and democratically elected representatives of their communities.

P. 18, Section 32 states *“While the New Zealand three waters sector has strong natural monopoly characteristics, it has not been subject to economic regulation to date. This is likely because attempting to regulate a three waters sector involving 67 councils would be more likely to delivery net costs rather than net benefits to consumers, and society more generally.”*

Despite no economic regulator, councils have been close to, and held to account by, ratepayers through direct engagement, access to elected members and special consultative procedure requirements under the Local Government Act 2002. Councils are very concerned that large monopoly entities that they have no control over will not always act in the best interests of our community. We therefore strongly support economic and consumer protection regulation, preferably with a staged introduction.

P. 19, Sections 33 & 34. We do not agree that this is an accurate reflection.

In relation to Section 33 we seek clarification on where this been the case. Funding for three waters is ring fenced by councils. The new WSEs are going to be burdened by debt from non-three waters expenditure proposed by the Government (because of the reform funding for councils including “no worse off” and “better off” components) from day one.

p. 19, Section 35 states; *“While the scale of the four Water Services Entities should significantly increase their likelihood of delivering these objectives, there is a flip-side risk that the entities become less responsive to consumer and community needs as a result of their increased scale and expanding range of stakeholders. The Government is alert to this risk and has proposed a range of governance and consumer voice protections to mitigate the risk. However, economic regulation provides a strong and complementary regulatory backstop.”*

We do not believe that the scale of the WSEs would increase the likelihood of delivering objectives, however we do strongly agree with the flip-side risk mentioned in section 35, where entities become less responsive.

P. 19, Section 36. We agree with the conclusion made here, particularly if the reform programme proceeds in its current form.

## Conclusion

Thank you once again for the opportunity to make a submission on the discussion document.

Our secretariat is available to provide any further information or answer any questions the Ministry may have about our submission. Contact details are Maree McNeilly, Canterbury Mayoral Forum Secretariat, [secretariat@canterburymayors.org.nz](mailto:secretariat@canterburymayors.org.nz), 027 381 8924.

Ngā mihi

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line that tapers to the right.

Sam Broughton  
Mayor, Selwyn District Council  
Chair, Canterbury Mayoral Forum